



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-985]

Xanthan Gum from the People's Republic of China: Amended Preliminary Results of the Antidumping Duty Administrative Review; 2017-2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd. (collectively, Fufeng) is eligible for separate rate status. The period of review (POR) is July 1, 2017, through June 30, 2018. Interested parties are invited to comment on these amended preliminary results.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis or Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3147 or (202) 482-0835, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to a series of remand orders and the Court of International Trade's (CIT) final judgment regarding the underlying less-than-fair-value (LTFV) investigation, Commerce amended its final determination and prior amended final determination in the investigation and amended the *Order* by excluding merchandise produced and exported by Fufeng from the

Order.¹ Given this exclusion, Commerce discontinued this review with respect to, and did not issue preliminary or final results of review for, Fufeng while awaiting the outcome of the appeals process.² On February 10, 2020, the Court of Appeals for the Federal Circuit (CAFC) reversed the CIT's decision that resulted in the exclusion of Fufeng from the *Order*.³ Accordingly, Commerce issued a third amended final determination in the LTFV investigation of xanthan gum from China, in which it found Fufeng subject to the *Order* and announced its intention to resume the instant review of Fufeng.⁴ Commerce is now amending the preliminary results of this administrative review by completing the administrative review with respect to Fufeng.

In the *Third Amended Final Determination*, Commerce explained that:

... because we already selected mandatory respondents, other than Fufeng, and issued final results with respect to those respondents, we will analyze Fufeng's separate rate certification and issue preliminary results regarding Fufeng's separate rate status. We will set a briefing period to allow interested parties to comment on our separate rates determination for Fufeng before issuing the final results of review with respect to Fufeng.⁵

Accordingly, we have addressed Fufeng's separate rate status below.

Scope of the *Order*

¹ See *Xanthan Gum from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 43143 (July 19, 2013) (*Order*); see also *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 15-27 (CIT March 31, 2015); *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 16-36 (CIT April 8, 2016); *CP Kelco US, Inc. v. United States*, 211 F. Supp. 3d 1338 (CIT 2017); *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 18-36 (CIT April 5, 2018); *CP Kelco US, Inc. v. United States*, Ct. No. 13-00288, Slip Op. 18-120 (CIT September 17, 2018); and *Xanthan Gum From the People's Republic of China: Notice of Court Decision Not in Harmony With Amended Final Determination in Less Than Fair Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of Fourth and Fifth Antidumping Duty Administrative Reviews in Part*, 83 FR 52205 (October 16, 2018) (*Discontinuation and Partial Revocation*).

² See *Discontinuation and Partial Revocation* at 52206; see also *Xanthan Gum From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 26813 (June 10, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (June 2019 Preliminary Decision Memorandum) and *Xanthan Gum From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64831 (November 25, 2019) (*Final Results*) and accompanying Issues and Decision Memorandum.

³ See *CP Kelco US, Inc. v. United States, Neimenggu Fufeng Biotechnologies Co., Ltd., Shandong Fufeng Fermentation Co., Ltd.*, 949 F.3d 1348 (Fed. Cir. 2020).

⁴ See *Xanthan Gum from the People's Republic of China: Notice of Third Amended Final Determination Pursuant to Court Decision*, 85 FR 40967 (July 8, 2020) (*Third Amended Determination*).

⁵ *Id.* at 40969.

The product covered by the *Order* is dry xanthan gum, whether or not coated or blended with other products, from China (xanthan gum).⁶

Separate Rate Status

Based on the criteria established by *Sparklers*⁷ and *Silicon Carbide*,⁸ Commerce preliminarily determines that the information placed on the record by Fufeng demonstrates an absence of *de jure* and *de facto* government control over its export activities. Therefore, we have preliminarily granted Fufeng separate rate status. For details regarding our analysis, *see* the Preliminary Decision Memorandum.

Dumping Margin for Non-Individually Examined Respondents Granted Separate Rate Status

The statute and Commerce's regulations do not identify the dumping margin to apply to respondents that are eligible for a separate rate in a non-market economy antidumping duty administrative review that were not selected for individual examination. Generally, Commerce looks to section 735(c)(5) of the Tariff Act of 1930, as amended (the Act), which provides instructions for calculating the all-others rate in a market economy antidumping duty investigation, for guidance when determining the dumping margin for respondents that were not individually examined that qualify for a separate rate. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins determined for individually examined respondents, excluding dumping margins that are zero, *de minimis*, or based entirely on facts available. Where the dumping margins for the individually examined respondents are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method" to establish the all others rate. The dumping margins for both of the individually examined respondents in

⁶ For a complete description of the scope of the *Order*, *see* Memorandum, "Xanthan Gum from the People's Republic of China: Decision Memorandum for the Amended Preliminary Results of the 2017-2018 Antidumping Duty Administrative Review" (Preliminary Decision Memorandum).

⁷ *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

⁸ *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

this review are zero. Therefore, consistent with the dumping margin assigned to the other non-individually examined separate rate recipients in the *Final Results* of this review, we are preliminarily assigning a dumping margin of zero percent to Fufeng.⁹

Disclosure and Public Comment

Because Commerce did not calculate a weighted-average dumping margin for Fufeng, there are no calculations to disclose to interested parties.

Interested parties are invited to comment on these amended preliminary results of review. Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 21 days after the date of publication of this notice in the *Federal Register*.¹⁰ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.¹¹ Parties who submit case briefs or rebuttal briefs should submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹² Executive summaries should be limited to five pages total, including footnotes.¹³ Case and rebuttal briefs should be filed using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).¹⁴ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.¹⁵

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 21 days of the date of publication of this notice in the *Federal Register*.¹⁶ Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, by the deadline noted above. If

⁹ See *Final Results* at 64832.

¹⁰ Commerce has exercised its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for submission of case briefs.

¹¹ See 19 CFR 351.309(d)(1); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ *Id.*

¹⁴ See 19 CFR 351.303.

¹⁵ See *Temporary Rule*.

¹⁶ Commerce has exercised its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

a hearing is requested, Commerce will notify interested parties of the hearing date and time. Requests for a hearing should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party's firm that will attend the hearing; and (3) a list of the issues the party intends to discuss at the hearing. Issues raised in the hearing are limited to those issues raised in the party's case and rebuttal briefs.

Unless we extend the deadline for the amended final results of this review, we intend to issue the amended final results of this administrative review, including the results of our analysis of issues raised by the parties in their briefs, within 120 days of the date of publication of this notice in the *Federal Register*.¹⁷

Assessment Rates

Upon issuance of the amended final results of review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by the amended final results of review.¹⁸ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended final results of this review in the *Federal Register*.¹⁹ If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The cash deposit rate for Fufeng will be equal to the dumping margin established for Fufeng in the amended final results of this review (if the dumping margin is zero or *de minimis*, then a cash deposit rate of zero will be required). For information regarding the cash deposit requirements established for other companies in this segment of the proceeding, *see the Final Results*.

¹⁷ See section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h)(1).

¹⁸ See 19 CFR 351.212(b)(1).

¹⁹ See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

This cash deposit requirement, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interest Parties

These amended preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: August 30, 2021.

James Maeder,

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations.